

IC 33-38-6

Chapter 6. Judges' Retirement System

IC 33-38-6-1

"Americans with Disabilities Act" defined

Sec. 1. As used in this chapter, "Americans with Disabilities Act" refers to the Americans with Disabilities Act (42 U.S.C. 12101 et seq.) and any amendments and regulations related to the act.

As added by P.L.98-2004, SEC.17.

IC 33-38-6-2

"Board" defined

Sec. 2. As used in this chapter, "board" refers to the board of trustees of the public employees' retirement fund.

As added by P.L.98-2004, SEC.17.

IC 33-38-6-3

"Employer" defined

Sec. 3. As used in this chapter, "employer" means the state of Indiana.

As added by P.L.98-2004, SEC.17.

IC 33-38-6-4

"Fiscal year" defined

Sec. 4. As used in this chapter, "fiscal year" means the period beginning July 1, in any year, and ending June 30 of the succeeding year.

As added by P.L.98-2004, SEC.17.

IC 33-38-6-5

"Fund" defined

Sec. 5. As used in this chapter, "fund" refers to the Indiana judges' retirement fund established by section 12 of this chapter.

As added by P.L.98-2004, SEC.17.

IC 33-38-6-6

"Internal Revenue Code" defined

Sec. 6. As used in this chapter, "Internal Revenue Code":

(1) means the Internal Revenue Code of 1954, as in effect September 1, 1974, if permitted with respect to governmental plans; or

(2) to the extent not inconsistent with subdivision (1), has the meaning set forth in IC 6-3-1-11.

As added by P.L.98-2004, SEC.17.

IC 33-38-6-7

"Judge" defined

Sec. 7. As used in this chapter, "judge" means a person who serves or has served as a regular judge or justice of one (1) or more of the following courts:

- (1) Supreme court.
- (2) Court of appeals.
- (3) Indiana tax court.
- (4) Circuit court of a judicial circuit.
- (5) Superior court of a county.
- (6) Criminal court of a county having a separate criminal court.
- (7) Probate court of a county having a separate probate court.
- (8) Juvenile court of a county having a separate juvenile court.
- (9) Municipal court of a county.
- (10) County court of a county.

As added by P.L.98-2004, SEC.17.

IC 33-38-6-8

"Judge pro tempore service" defined

Sec. 8. As used in this chapter, "judge pro tempore service" means service in Indiana as a full-time judge pro tempore appointed under Trial Rule 63(B) that:

- (1) is not covered by IC 33-38-7 or IC 33-38-8; and
- (2) is served by a person who has other service that is covered by IC 33-38-7 or IC 33-38-8.

As added by P.L.98-2004, SEC.17.

IC 33-38-6-9

"Participant" defined

Sec. 9. As used in this chapter, "participant" means a judge who participates in the fund.

As added by P.L.98-2004, SEC.17.

IC 33-38-6-10

"Salary" defined

Sec. 10. As used in this chapter, "salary" means the total salary paid to a participant by the state and by a county or counties, determined without regard to any salary reduction agreement established under Section 125 of the Internal Revenue Code.

As added by P.L.98-2004, SEC.17.

IC 33-38-6-11

"Services" defined

Sec. 11. As used in this chapter, "services" means the period beginning on the first day a person first becomes a judge, whether the date is before, on, or after March 11, 1953, and ending on the date under consideration and includes all intervening employment as a judge.

As added by P.L.98-2004, SEC.17.

IC 33-38-6-12

Indiana judges' retirement fund

Sec. 12. The Indiana judges' retirement fund is established and consists of:

- (1) each participant's contribution to the fund;

- (2) gifts, grants, devises, and bequests in money, property, or other forms made to the fund;
- (3) interest on investments or on deposits of the funds; and
- (4) contributions or payments to the fund made in the manner provided by the general assembly, including appropriations from the state general fund as provided by this chapter.

As added by P.L.98-2004, SEC.17.

IC 33-38-6-13

Qualification of fund under Internal Revenue Code

Sec. 13. The fund must satisfy the qualification requirements in Section 401 of the Internal Revenue Code, as applicable to the fund. In order to meet those requirements, the fund is subject to the following provisions, notwithstanding any other provision of this chapter IC 33-38-7, or IC 33-38-8:

- (1) The board shall distribute the corpus and income of the fund to participants and their beneficiaries in accordance with this chapter, IC 33-38-7, and IC 33-38-8.
- (2) A part of the corpus or income of the fund may not be used or diverted to a purpose other than the exclusive benefit of the participants and their beneficiaries.
- (3) Forfeitures arising from severance of employment, death, or for any other reason may not be applied to increase the benefits a participant would otherwise receive under the fund.
- (4) If the fund is terminated or if all contributions to the fund are completely discontinued, the rights of each affected participant to the benefits accrued at the date of the termination or discontinuance, to the extent then funded, are nonforfeitable.
- (5) All benefits paid from the fund shall be distributed in accordance with the requirements of Section 401(a)(9) of the Internal Revenue Code and the regulations under that section. In order to meet those requirements, the fund is subject to the following provisions:

- (A) The life expectancy of a participant, the participant's spouse, or the participant's beneficiary shall not be recalculated after the initial determination, for purposes of determining benefits.
- (B) If a participant dies before the distribution of the participant's benefits has begun, distributions to beneficiaries must begin not later than December 31 of the calendar year immediately following the calendar year in which the participant died.

- (6) The board may not:

- (A) determine eligibility for benefits;
- (B) compute rates of contribution; or
- (C) compute benefits of participants or beneficiaries;

in a manner that discriminates in favor of participants who are considered officers, supervisors, or highly compensated, as prohibited under Section 401(a)(4) of the Internal Revenue Code.

(7) The salary taken into account under this chapter, IC 33-38-7, or IC 33-38-8 may not exceed the applicable amount under Section 401(a)(17) of the Internal Revenue Code.

As added by P.L.98-2004, SEC.17.

IC 33-38-6-14

Administration of fund

Sec. 14. The board shall administer the fund in a manner that is consistent with the Americans with Disabilities Act, to the extent required by the act.

As added by P.L.98-2004, SEC.17.

IC 33-38-6-15

Law governing participation, contributions, withdrawals, and benefits; Family and Medical Leave Act; Uniformed Services Employment and Reemployment Act

Sec. 15. (a) Conditions for participation in the fund, contributions to the fund, withdrawal from the fund, and eligibility for and computation of benefits for participants and their survivors are governed by IC 33-38-7 and IC 33-38-8.

(b) Notwithstanding any provision of this chapter, IC 33-38-7, or IC 33-38-8, the fund must be administered in a manner consistent with the Family and Medical Leave Act of 1993 (29 U.S.C. 2601 et seq.). A participant on a leave of absence that qualifies for the benefits and protections afforded by the Family and Medical Leave Act is entitled to receive credit for vesting and eligibility purposes to the extent required by the Family and Medical Leave Act but is not entitled to receive credit for service for benefit purposes.

(c) Notwithstanding any provision of this chapter, IC 33-38-7, and IC 33-38-8, a participant is entitled to service credit and benefits in the amount and to the extent required by the Uniformed Services Employment and Reemployment Rights Act (38 U.S.C. 4301 et seq.).

As added by P.L.98-2004, SEC.17.

IC 33-38-6-16

Referendum of judges concerning federal Social Security agreement

Sec. 16. (a) The governor may conduct, or cause to be conducted, a referendum for the judges who are covered by the provisions of the judges' retirement fund to determine whether the judges covered by the retirement fund shall be excluded from or included in the agreement negotiated under the provisions of Section 218 of the federal Social Security Act (as defined in IC 5-10.1-1-9). The referendum must be conducted in full compliance with all the requirements of Section 218(d) of the federal Social Security Act. The governor shall designate the board as the agency to conduct and supervise the referendum, and the expense of conducting the referendum shall be paid from funds appropriated to the fund.

(b) If the majority of the judges who are eligible to vote in the referendum described in subsection (a) vote in the negative, the

board may request that a subsequent referendum be conducted in the same manner and with the same effect described in subsection (a). However, a subsequent referendum may not be conducted within one (1) year after the date of the prior referendum.

(c) If a majority of the judges who are eligible to vote in the referendum described in subsection (a) vote in the affirmative, both the:

(1) judges covered by the retirement fund; and

(2) judges who waived their right to be covered by the provisions of the retirement fund;

shall be included in the agreement negotiated by the state with the Secretary of the United States Department of Health and Human Services in the same manner provided in IC 5-10.1-4 for the inclusion of services covered by the retirement systems specified in IC 5-10.1-4-1 in the agreement.

(d) Each judge whose services are covered by Social Security is required to pay during the period of the judge's service the employee contributions required by the agreement. The contributions shall begin on the effective date of the judge's coverage and are subject to the terms and conditions of IC 5-10.1.

(e) The auditor of state shall pay the employer contributions required under the agreement wholly from funds appropriated to the fund, and the contributions begin on the effective date of the modification that adds the judges of the fund to the federal-state agreement. The employer contributions shall be paid in the manner provided in the agreement.

(f) The modification of the federal-state agreement to effectuate the participation of the judges in the agreement must be effective for services performed on a date fixed and determined by the board.

As added by P.L.98-2004, SEC.17.

IC 33-38-6-17

Appropriation from state general fund

Sec. 17. (a) For purposes of this chapter, there is appropriated for each biennium a sum of money, computed on an actuarially funded basis, as follows:

(1) From the state general fund for participants' retirement benefits, the amount determined by the board, on recommendation of an actuary, which, when added to the part of the fund held for benefits at the date of the appropriation, is equal to the total liability of the fund for benefits to the end of the biennium.

(2) From the earnings on the fund, for administration purposes, the amount required during the biennium, as determined by the board on the basis of experience. The amount required for administration shall be paid out as the operating expenses of other state departments are paid.

(b) The biennial appropriation provided in this section shall be credited to the board annually in equal installments in July of each year of the biennium.

As added by P.L.98-2004, SEC.17.

IC 33-38-6-18

Use of appropriated funds

Sec. 18. The amount appropriated under section 17 of this chapter for participants' retirement benefits shall be used for retirement benefits under IC 33-38-7 and IC 33-38-8.

As added by P.L.98-2004, SEC.17.

IC 33-38-6-19

Fund construed as a trust

Sec. 19. The fund shall be construed to be a trust, separate and distinct from all other entities, maintained to secure payment of benefits to the participants and their beneficiaries, as prescribed in IC 33-38-7 and IC 33-38-8.

As added by P.L.98-2004, SEC.17.

IC 33-38-6-20

Use of fund for administrative costs

Sec. 20. In addition to the purpose set forth in section 19 of this chapter, the fund may be used for the payment of the costs of administering this chapter.

As added by P.L.98-2004, SEC.17.

IC 33-38-6-21

Warrants to participants

Sec. 21. (a) When drawing a salary warrant for a participant, the auditor of state and the county auditor shall deduct from the amount of the warrant the participant's contribution, if any, to the fund in the amount certified in the vouchers or an order issued by the director.

(b) The auditor of state and the county auditor shall draw a warrant to the fund for the total contributions withheld from the participants each month. The warrant drawn to the fund together with a list of participants and the amount withheld from each participant shall be transmitted immediately to the director.

(c) The auditor of state shall draw warrants upon the treasurer of state, payable from the fund, for purposes provided for in this chapter, upon the presentation of vouchers or an order signed by the director of the board in accordance with resolutions of the board.

As added by P.L.98-2004, SEC.17.

IC 33-38-6-22

Salary warrants indicating deductions of contributions

Sec. 22. The auditor of state and the county auditor in the preparation of salary warrants to participants shall indicate on the payroll voucher the following information, in addition to other things:

- (1) The amount of the participant's contribution to the fund deducted from the salary of the participant.
- (2) The net amount payable to the participant, after the

deduction of the participant's contribution.
As added by P.L.98-2004, SEC.17.

IC 33-38-6-23

Administration of fund; confidentiality of fund records

Sec. 23. (a) The board of trustees of the public employees' retirement fund shall administer the fund, which may be commingled with the public employees' retirement fund for investment purposes.

(b) The board shall do the following:

(1) Determine eligibility for and make payments of benefits under IC 33-38-7 and IC 33-38-8.

(2) In accordance with the powers and duties granted it in IC 5-10.3-3-7, IC 5-10.3-3-7.1, IC 5-10.3-3-8, and IC 5-10.3-5-3 through IC 5-10.3-5-6, administer the fund.

(3) Provide by rule for the implementation of this chapter and IC 33-38-7 and IC 33-38-8.

(c) A determination by the board may be appealed under the procedures in IC 4-21.5.

(d) The powers and duties of:

(1) the director and the actuary of the board;

(2) the treasurer of state;

(3) the attorney general; and

(4) the auditor of state;

with respect to the fund are those specified in IC 5-10.3-3 and IC 5-10.3-4.

(e) The board may hire additional personnel, including hearing officers, to assist it in the implementation of this chapter.

(f) Fund records of individual participants and participants' information are confidential, except for the name and years of service of a fund participant.

As added by P.L.98-2004, SEC.17. Amended by P.L.94-2004, SEC.6.

IC 33-38-6-24

Rollover to eligible retirement plan

Sec. 24. Notwithstanding any other provision of this chapter, IC 33-38-7, or IC 33-38-8, to the extent required by Internal Revenue Code Section 401(a)(31) of the Internal Revenue Code, as added by the Unemployment Compensation Amendments of 1992 (P.L. 102-318), and any amendments and regulations related to Section 401(a)(31) of the Internal Revenue Code, the fund shall allow participants and qualified beneficiaries to elect a direct rollover of eligible distributions to another eligible retirement plan.

As added by P.L.98-2004, SEC.17.

IC 33-38-6-25

Service credit; contributions after retirement for subsequent service as judge

Sec. 25. (a) A judge is entitled to a month of service credit for services performed in any fraction of a calendar month. However, a judge is not entitled to more than one (1) month of credit for services

performed in a calendar month.

(b) Except as otherwise provided in this chapter, if a judge is elected or appointed and serves one (1) or more terms or part of a term, then retires from office but at a later period or periods is appointed or elected and serves as judge, the judge shall pay into the fund during all the periods served as judge, whether the periods are served consecutively or not.

(c) Except as otherwise provided in this chapter, a judge is not required to pay into the fund:

(1) at any time when the judge is not serving as judge; or

(2) during any period of service as a senior judge under IC 33-23-3.

As added by P.L.98-2004, SEC.17.

IC 33-38-6-26

Judge pro tempore service credit; conditions

Sec. 26. (a) A participant may purchase judge pro tempore service credit if:

(1) the participant has at least one (1) year of service in the fund;

(2) before the participant retires, the participant makes contributions to the fund:

(A) that are equal to the product of:

(i) the participant's salary at the time the participant actually makes a contribution for the service credit; multiplied by

(ii) a percentage rate, as determined by the actuary of the fund, that is based on the age of the participant at the time the participant makes a contribution for service credit and computed to result in a contribution amount that approximates the actuarial present value of the benefit attributable to the service credit purchased; multiplied by

(iii) the number of years of judge pro tempore service the participant intends to purchase; and

(B) for any accrued interest, at a rate determined by the actuary of the fund, for the period from the participant's initial membership in the fund to the date payment is made by the participant; and

(3) the fund receives verification from the applicable court that the judge pro tempore service occurred.

(b) A participant may not receive service credit under this section if the judge pro tempore service for which the participant requests credit also qualifies the participant for a benefit in another retirement system.

(c) A participant who:

(1) terminates service before satisfying the requirements for eligibility to receive a retirement benefit from the fund; or

(2) receives a retirement benefit for the same service from another retirement system, other than under the federal Social Security Act;

may withdraw the participant's contributions made under this section plus accumulated interest after submitting to the fund a properly completed application for a refund.

(d) The following apply to the purchase of service credit under this section:

(1) The board may allow a participant to make periodic payments of the contributions required for the purchase of the service credit. The board shall determine the length of the period during which the payments are to be made.

(2) The board may deny an application for the purchase of service credit if the purchase would exceed the limitations set forth in Section 415 of the Internal Revenue Code.

(3) A participant may not claim the service credit for purposes of determining eligibility or computing benefits unless the participant has made all payments required for the purchase of the service credit.

(e) To the extent permitted by the Internal Revenue Code and applicable regulations, the fund may accept, on behalf of a participant who is purchasing service credit under this section, a rollover of a distribution from any of the following:

(1) A qualified plan described in Section 401(a) or Section 403(a) of the Internal Revenue Code.

(2) An annuity contract or account described in Section 403(b) of the Internal Revenue Code.

(3) An eligible plan that is maintained by a state, a political subdivision of a state, or an agency or instrumentality of a state or political subdivision of a state under Section 457(b) of the Internal Revenue Code.

(4) An individual retirement account or annuity described in Section 408(a) or Section 408(b) of the Internal Revenue Code.

(f) To the extent permitted by the Internal Revenue Code and the applicable regulations, the fund may accept, on behalf of a participant who is purchasing service credit under this section, a trustee to trustee transfer from any of the following:

(1) An annuity contract or account described in Section 403(b) of the Internal Revenue Code.

(2) An eligible deferred compensation plan under Section 457(b) of the Internal Revenue Code.

As added by P.L.98-2004, SEC.17.

IC 33-38-6-27

Reference to judges' retirement system

Sec. 27. A reference to the judges' retirement system under this chapter is considered a reference to the judges' retirement fund under this article.

As added by P.L.98-2004, SEC.17.